

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 1333

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
CLARIFYING FINGERPRINTING PROCEDURES FOR BACKGROUND  
INVESTIGATIONS CONDUCTED BY THE GAMING CONTROL BOARD;  
AUTHORIZING THE GAMING CONTROL BOARD TO CONDUCT BACKGROUND  
INVESTIGATIONS FOR THE STATE RACING COMMISSION; DECLARING AN  
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-2E-7 NMSA 1978 (being Laws 1997,  
Chapter 190, Section 9, as amended) is amended to read:

"60-2E-7. BOARD'S POWERS AND DUTIES.--

A. The board shall implement the state's policy on  
gaming consistent with the provisions of the Gaming Control Act  
and the Bingo and Raffle Act. It has the duty to fulfill all  
responsibilities assigned to it pursuant to those acts, and it

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1 has all authority necessary to carry out those  
2 responsibilities. It may delegate authority to the executive  
3 director, but it retains accountability. The board is an  
4 adjunct agency.

5 B. The board shall:

- 6 (1) employ the executive director;
- 7 (2) make the final decision on issuance,  
8 denial, suspension and revocation of all licenses pursuant to  
9 and consistent with the provisions of the Gaming Control Act  
10 and the Bingo and Raffle Act;
- 11 (3) develop, adopt and promulgate all  
12 regulations necessary to implement and administer the  
13 provisions of the Gaming Control Act and the Bingo and Raffle  
14 Act;
- 15 (4) conduct itself, or employ a hearing  
16 officer to conduct, all hearings required by the provisions of  
17 the Gaming Control Act and other hearings it deems appropriate  
18 to fulfill its responsibilities;
- 19 (5) meet at least once each month; and
- 20 (6) prepare and submit an annual report in  
21 December of each year to the governor and the legislature,  
22 covering activities of the board in the most recently completed  
23 fiscal year, a summary of gaming activities in the state and  
24 any recommended changes in or additions to the laws relating to  
25 gaming in the state.

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1 C. The board may:

2 (1) impose civil fines not to exceed  
3 twenty-five thousand dollars (\$25,000) for the first violation  
4 and fifty thousand dollars (\$50,000) for subsequent violations  
5 of any prohibitory provision of the Gaming Control Act or any  
6 prohibitory provision of a regulation adopted pursuant to that  
7 act;

8 (2) conduct investigations;

9 (3) subpoena persons and documents to compel  
10 access to or the production of documents and records, including  
11 books and memoranda, in the custody or control of a licensee;

12 (4) compel the appearance of employees of a  
13 licensee or persons for the purpose of ascertaining compliance  
14 with provisions of the Gaming Control Act or a regulation  
15 adopted pursuant to its provisions;

16 (5) administer oaths and take depositions to  
17 the same extent and subject to the same limitations as would  
18 apply if the deposition were pursuant to discovery rules in a  
19 civil action in the district court;

20 (6) sue and be sued subject to the limitations  
21 of the Tort Claims Act;

22 (7) contract for the provision of goods and  
23 services necessary to carry out its responsibilities;

24 (8) conduct audits, relevant to their gaming  
25 activities, of applicants, licensees and persons affiliated

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1 with licensees;

2 (9) inspect, examine, photocopy and audit all  
3 documents and records of an applicant or licensee relevant to  
4 ~~[his]~~ the applicant's or licensee's gaming activities in the  
5 presence of the applicant or licensee or ~~[his]~~ the applicant's  
6 or licensee's agent;

7 (10) require verification of income and all  
8 other matters pertinent to the gaming activities of an  
9 applicant or licensee affecting the enforcement of any  
10 provision of the Gaming Control Act;

11 (11) inspect all places where gaming  
12 activities are conducted and inspect all property connected  
13 with gaming in those places;

14 (12) summarily seize, remove and impound from  
15 places inspected any gaming devices, property connected with  
16 gaming, documents or records for the purpose of examination or  
17 inspection;

18 (13) inspect, examine, photocopy and audit  
19 documents and records, relevant to ~~[his]~~ the affiliate's gaming  
20 activities, of ~~[any]~~ an affiliate of an applicant or licensee  
21 that the board knows or reasonably suspects is involved in the  
22 financing, operation or management of the applicant or  
23 licensee. The inspection, examination, photocopying and audit  
24 shall be in the presence of a representative of the affiliate  
25 or its agent when practicable; ~~[and]~~

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1                    (14) conduct background investigations  
2 pursuant to the Horse Racing Act; and

3                    [~~(14)~~] (15) except for the powers specified in  
4 Paragraphs (1) and (4) of this subsection, carry out all or  
5 part of the foregoing powers and activities through the  
6 executive director.

7                    D. The board shall monitor all activity authorized  
8 in an Indian gaming compact between the state and an Indian  
9 nation, tribe or pueblo. The board shall appoint the state  
10 gaming representative for the purposes of the compact."

11                    Section 2. Section 60-2E-14 NMSA 1978 (being Laws 1997,  
12 Chapter 190, Section 16, as amended) is amended to read:

13                    "60-2E-14. LICENSURE--APPLICATION.--

14                    A. The board shall establish and issue the  
15 following categories of licenses:

- 16                                    (1) manufacturer;
- 17                                    (2) distributor;
- 18                                    (3) gaming operator; and
- 19                                    (4) gaming machine.

20                    B. The board shall issue certifications of findings  
21 of suitability for key executives and other persons for whom  
22 certification is required.

23                    C. The board shall issue work permits for gaming  
24 employees.

25                    D. A licensee shall not be issued more than one

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1 type of license, but this provision does not prohibit a  
2 licensee from owning, leasing, acquiring or having in [~~his~~] the  
3 licensee's possession licensed gaming machines if that activity  
4 is otherwise allowed by the provisions of the Gaming Control  
5 Act. A licensee shall not own a majority interest in, manage  
6 or otherwise control a holder of another type of license issued  
7 pursuant to the provisions of that act.

8 E. [~~Applicants~~] An applicant for a license, a  
9 certification of finding of suitability or a work permit shall  
10 apply on forms provided by the board and shall furnish to the  
11 board two sets of fingerprint cards and all other information  
12 requested by the board. Submission of an application  
13 constitutes consent to a national criminal background check of  
14 the applicant, a credit check of the applicant and all persons  
15 having a substantial interest in the applicant and any other  
16 background investigations required pursuant to the Gaming  
17 Control Act or deemed necessary by the board. The board may  
18 obtain from the taxation and revenue department copies of tax  
19 returns filed by or on behalf of the applicant or its  
20 affiliates and information concerning liens imposed on the  
21 applicant or its affiliates by the taxation and revenue  
22 department.

23 F. All licenses issued by the board pursuant to the  
24 provisions of this section shall be reviewed for renewal  
25 annually unless revoked, suspended, canceled or terminated.

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1 G. A license shall not be transferred or assigned.

2 H. The application for a license shall include:

3 (1) the name of the applicant;

4 (2) the location of the proposed operation;

5 (3) the gaming devices to be operated,  
6 manufactured, distributed or serviced;

7 (4) the names of all persons having a direct  
8 or indirect interest in the business of the applicant and the  
9 nature of such interest; and

10 (5) such other information and details as the  
11 board may require.

12 I. The board shall furnish to the applicant  
13 supplemental forms that the applicant shall complete and file  
14 with the application. [~~Such~~] The supplemental forms shall  
15 require two sets of fingerprint cards and complete information  
16 and details with respect to the applicant's antecedents,  
17 habits, immediate family, character, state and federal criminal  
18 record, business activities, financial affairs and business  
19 associates, covering at least a ten-year period immediately  
20 preceding the date of filing of the application.

21 J. In conducting a background investigation and  
22 preparing an investigative report on the applicant, the board's  
23 law enforcement officers may request and receive criminal  
24 history information from the federal bureau of investigation or  
25 any other law enforcement agency or organization. The board's

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1 law enforcement officers shall maintain confidentiality  
2 regarding information received from a law enforcement agency  
3 that may be imposed by the agency as a condition for providing  
4 the information to the board."

5 Section 3. Section 60-2E-16 NMSA 1978 (being Laws 1997,  
6 Chapter 190, Section 18) is amended to read:

7 "60-2E-16. ACTION BY BOARD ON APPLICATIONS.--

8 A. A person that the board determines is qualified  
9 to receive a license pursuant to the provisions of the Gaming  
10 Control Act may be issued a license. The burden of proving  
11 qualifications is on the applicant.

12 B. A license shall not be issued unless the board  
13 is satisfied that the applicant is:

14 (1) a person of good moral character, honesty  
15 and integrity;

16 (2) a person whose prior activities, state and  
17 federal criminal record, reputation, habits and associations do  
18 not pose a threat to the public interest or to the effective  
19 regulation and control of gaming or create or enhance the  
20 dangers of unsuitable, unfair or illegal practices, methods and  
21 activities in the conduct of gaming or the carrying on of the  
22 business and financial arrangements incidental thereto; and

23 (3) in all other respects qualified to be  
24 licensed consistent with the laws of this state.

25 C. A license shall not be issued unless the

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1 applicant has satisfied the board that:

2 (1) the applicant has adequate business  
3 probity, competence and experience in business and gaming;

4 (2) the proposed financing of the applicant is  
5 adequate for the nature of the proposed license and from a  
6 suitable source; any lender or other source of money or credit  
7 that the board finds does not meet the standards set forth in  
8 Subsection B of this section shall be deemed unsuitable; and

9 (3) the applicant is sufficiently capitalized  
10 under standards set by the board to conduct the business  
11 covered by the license.

12 D. An application to receive a license,  
13 certification or work permit constitutes a request for a  
14 determination of the applicant's general moral character,  
15 integrity and ability to participate or engage in or be  
16 associated with gaming. Any written or oral statement made in  
17 the course of an official proceeding of the board or by a  
18 witness testifying under oath that is relevant to the purpose  
19 of the proceeding is absolutely privileged and does not impose  
20 liability for defamation or constitute a ground for recovery in  
21 any civil action.

22 E. The board shall not issue a license or  
23 certification to an applicant who has been denied a license or  
24 certification in this state or another state, who has had a  
25 certification, permit or license issued pursuant to the gaming

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1 laws of a state or the United States permanently suspended or  
2 revoked for cause or who is currently under suspension or  
3 subject to any other limiting action in this state or another  
4 state involving gaming activities or licensure for gaming  
5 activities.

6 F. The board shall investigate the qualifications  
7 of each applicant before a license, certification or work  
8 permit is issued by the board and shall continue to observe and  
9 monitor the conduct of all licensees, work permit holders,  
10 persons certified as being suitable and the persons having a  
11 material involvement directly or indirectly with a licensee.

12 G. The board has the authority to deny an  
13 application or limit, condition, restrict, revoke or suspend a  
14 license, certification or permit for any cause.

15 H. After issuance, a license, certification or  
16 permit shall continue in effect upon proper payment of the  
17 initial and renewal fees, subject to the power of the board to  
18 revoke, suspend, condition or limit licenses, certifications  
19 and permits.

20 I. The board has full and absolute power and  
21 authority to deny an application for any cause it deems  
22 reasonable. If an application is denied, the board shall  
23 prepare and file its written decision on which its order  
24 denying the application is based."

25 Section 4. EMERGENCY.--It is necessary for the public

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1 peace, health and safety that this act take effect immediately.

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